

HIGH COURT FOR THE STATE OF TELANGANA

**THE HON'BLE THE ACTING CHIEF JUSTICE
RAGHVENDRA SINGH CHAUHAN**

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

W.P.No.211 of 2019

Date: 20.06.2019

Between:

Smt.Sujatha

...Petitioner

and

Government of Telangana,
Rep. by its Principal Secretary (Poll),
General Administration,
Special Law & Order Department,
Secretariat Buildings, Hyderabad, and another

...Respondents

Counsel for the petitioner: Mr. M. Rathan Singh

Counsel for the respondent No.1: Mr. S. Sharath Kumar

The Court made the following:

ORDER: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Smt. Sujatha, the petitioner, has filed the present Habeas Corpus Petition challenging the detention order dated 03.08.2018, passed by the respondent No.2, the Commissioner of Police, against her husband, namely, Mr.Parupally Karthik, and the confirmation order dated 25.10.2018, passed by the respondent No.1-Government.

Briefly, the facts of the case are that, according to the petitioner, the respondent No.2 had passed the preventive detention order ostensibly on the ground that there were two criminal cases registered against the detenu, namely, Crime No.227 of 2017, for the offence under Section 8(c) r/w 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'), and C.O.R.No.113 of 2018 again for the offence under Section 8(c) r/w 20 (c) of the NDPS Act. Subsequently, the said preventive detention order was confirmed by the respondent No.1 by order dated 25.10.2018. Hence, this writ petition before this Court.

Mr. M. Rathan Singh, learned counsel for the petitioner, has relied on the case of ***Rekha v. State of Tamil Nadu through Secretary to Government and another***¹ in order to buttress his plea that in case no bail application has been filed by the detenu, a preventive detention order cannot be passed. Since in the present case, the detenu had not filed any bail application, he continues to be confined in judicial custody. Therefore, the question of preventively detaining him "in custody" would not even arise. But despite the said fact the impugned preventive detention order has

¹ (2011) 5 SCC 244

been passed, and, subsequently, confirmed. Thus, both the orders suffer from non-application of mind, and from colourable exercise of power.

On the other hand, Mr. S. Sharath Kumar, the learned Special Government Pleader, has strenuously argued that drug peddlers should not be spared, as they are a menace to the society. Due to their illegal peddling of drugs, the youth is adversely affected. Thus, their acts tend to tear the fabric of the society at large. Therefore, every single act of theirs is a threat to the public order. Hence, both the impugned orders are legally valid.

Heard the learned counsel for the parties and, perused the impugned orders.

In the case of **Rekha (Supra)**, a Full Bench of the Hon'ble Supreme Court has clearly opined as under:

“In our opinion, there is a real possibility of release of a person on bail who is already in custody provided he has moved a bail application which is pending. It follows logically that if no bail application is pending, then there is no likelihood of the person in custody being released on bail, and hence the detention order will be illegal. However, there can be an exception to this rule, that is, where a co-accused whose case stands on the same footing had been granted bail. In such cases, the detaining authority can reasonably conclude that there is likelihood of the detenu being released on bail even though no bail application of his is pending, since most courts normally grant bail on this ground. However, details of such alleged similar cases must be given, otherwise the bald statement of the authority cannot be believed.”

Mr. Sharath also claims that the plea raised by the learned counsel for the petitioner is hyper technical. Therefore, this Court should not take a hyper technical view of the matter. But, the said

plea was also raised in the case of ***Rekha (supra)***. The Hon'ble Supreme Court rejected the said plea as under:

“Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles. It follows, therefore, that if the ordinary law of the land (Indian Penal Code and other penal statutes) can deal with a situation, recourse to a preventive detention law will be illegal.

Whenever an order under a preventive detention law is challenged one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal.”

Therefore, Mr. Sharath is not justified in pleading that hyper-technical view of the matter should not be entertained by this Court.

Although it is true that the prevalence of drug abuse is a menace to the society, the issue before this Court is whether the detaining authority is justified in passing the detention order, which obviously robs a person of his personal liberty, even when the person is “in custody”. As observed by the Apex Court, since no bail application is filed, the detenu continues to be in custody. Therefore, there is no reason why a preventive detention order for keeping the person “in custody” should have been passed. After all, such an order is a mere exercise in redundancy as the detenu is already “in custody”.

Although the detaining authority has observed that the detenu is making persistent efforts to come out of the prison on bail in the above two cases by filing bail petitions, but the fact remains that at the relevant time, no bail application had been filed by the detenu. Thus, there was not even a remote possibility of the detenu being released on bail.

Moreover, even if a bail application were filed, the detaining authority has sufficient legal remedies available to it to oppose the bail, and to ensure that the bail is not granted by the Court of law. Considering the fact that even an NDPS case can be dealt with under the provisions of the NDPS Act, *prima facie*, the preventive detention order is unjustified especially when the detenu is already in custody.

For the reasons stated above, this Writ Petition is, hereby, allowed. The impugned orders, dated 03.08.2018 and 25.10.2018, are set aside. The respondents are directed to release the *detenu*, namely, Paripally Karthik @ Parupally Karthik from preventive detention forthwith, if he is not required in any other case or crime.

Although this Court has said that the detenu is at liberty, it is hereby made abundantly clear that any observations made by this Court would not and should not influence the consideration of a bail application, if any, filed by the detenu.

(RAGHVENDRA SINGH CHAUHAN, ACJ)

Date: 20.06.2019

(Dr. SHAMEEM AKTHER, J)

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